

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2629**

**PETITION OF ALAN AND SUSAN DECHTER LLC**

OPINION OF THE BOARD

(Opinion Adopted December 20, 2006 )

(Effective Date of Opinion: January 26, 2007)

Case No. S-2629 is an application for a special exception, pursuant to Section 59-G-2.36 of the Zoning Ordinance, to permit a non-resident medical practitioner's (dentist) office. This matter originally came before the Board on November 2, 2005, and was denied in an opinion dated February 10, 2006. In a Resolution effective April 5, 2006, the Board granted the Petitioner's request for reconsideration of its decision, and remanded the case to the Hearing Examiner for further proceedings. The Hearing Examiner held a hearing on the application on reconsideration on August 30, 2006, closed the record on December 6, 2006, and on December 8, 2006, issued a Report and Recommendation for approval of the special exception.

The subject property is known as Parcels P911 and P912, St. Winexburg Subdivision, at 12817 Georgia Avenue, Silver Spring, Maryland 20906.

Decision of the Board:                      Special Exception **Granted** Subject  
to Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on December 20, 2006. Modifications to the proposed building have greatly reduced the impact of its footprint along Georgia Avenue and on the lot. After careful consideration and review of the record the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions.

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner shall maintain an appointment book showing the times of all client appointments and of all emergency patient visits.
3. Petitioner shall maintain a record of the time that each employee starts and stops work each day.
4. Staffing and patient appointments must be limited as follows:
  - a. Up to two full-time dentists.
  - b. Up to a total of nine part-time (4.5 full-time equivalent) dental assistants and office staff persons.
  - c. No more than six dental assistants and/or office staff on site at any one time, in addition to the two dentists.
  - d. No more than five scheduled appointments within any hour, excluding emergency patients.
  - e. No more than 55 scheduled patient appointments per full working day, excluding emergency patients.
  - f. Abuse of the exclusion for emergency patients may result in revocation of the special exception or the imposition of additional conditions.
5. Parking lot pole lights must be turned off no later than 30 minutes after closing each work day.
6. A five-foot sidewalk must be built along the property's entire Weller Road frontage, consistent with the recommendations of Environmental Planning Staff at the MNCPPC.
7. The site plan must be implemented with such minor revisions as agreed upon by Petitioner and Technical Staff to minimize intrusion into the critical root zones of the identified specimen trees.
8. Petitioner must comply with subdivision requirements under Chapter 50 of the County Code. At preliminary plan review, Petitioner must provide for right-of-way dedication under Section 59-G-1.21(c), (a) for truncation of right-of way of 25 feet at the corner of Georgia Avenue and Weller Road; and (b) to provide a total of 67.5 feet of right-of-way from the centerline of Georgia Avenue in accordance with the approved and adopted Glenmont Sector Plan.

9. Petitioner must submit to MNCPPC Environmental Planning Staff, before issuance of sediment and erosion control permits, a Tree Save Plan prepared by an ISA-certified arborist, which demonstrates full compliance with the requirements of Forest Conservation Law Section 22A-12. The Tree Save Plan must incorporate every effort to preserve tree number 4, a 29" Walnut, and tree number 7, a 30" Maple.
10. In the event that either or both of trees number 4 and 7 dies, they must be replaced within the next growing season with trees of a similar species and reasonable size.
11. A representation of the sign installed on the site must be provided to the Board of Appeals for its records. The sign shall be approximately the same size as and similar in appearance to the sign at Dr. Dechter's existing practice, as shown on page 36 of this report. In the event that the Petitioner requires a sign variance, proof that such a variance has been obtained must be submitted to the Board of Appeals for its records.
12. Petitioner shall inform the Glenmont United Methodist Church, in writing, that the terms and conditions of this special exception do not permit him to make his parking lot available for use by anyone other than employees, patients, or residents and their guests, and shall submit a copy of this letter into the special exception record.
13. The special exception may not be transferred to a new special exception holder without approval from the Board of Appeals.
14. The Board of Appeals retains jurisdiction to impose additional conditions related to the driveway and/or parking, if future evidence so warrants.
15. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

The Hearing Examiner's Report and Recommendation contained two additional conditions, numbers 7 and 8, which were also adopted by the Board:

7. The site plan must be revised, before the special exception takes effect, to provide for all elements shown on Exhibit 94(a), but with 14 parking spaces as shown on Exhibit 85.
8. Petitioner must submit a revised Statement of Operations, before the special exception takes effect, to reflect the increase to 14 parking spaces.

These revised exhibits were received into the record on January 10, 2007, together with a revised Landscape Plan, as Exhibit Nos. 98-100.

On a motion by Caryn L. Hines, seconded by Wendell M. Holloway, with Catherine G. Titus and Donna L. Barron in agreement and Allison Ishihara Fultz necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 26<sup>th</sup> day of January, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the

Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.